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Franklin Sports, Inc.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

SAN FRANCISCO TECHNOLOGY, INC.

Plaintiff,

vs.

FRANKLIN SPORTS, INC.

Defendant.

Case No. C10-05210 PJH

**DEFENDANT FRANKLIN SPORTS,
INC.'S LOCAL RULE 7-3(D)
STATEMENT OF RECENT DECISION IN
SUPPORT OF MOTION TO DISMISS**

Judge: Hon. Phyllis J. Hamilton
Date: March 23, 2011
Time: 9:00 a.m.
Courtroom: Courtroom 3, 3rd Floor

1 Defendant Franklin Sports, Inc. ("Franklin") respectfully submits, pursuant to Northern
 2 District of California Civil Local Rule 7-3(d), this Statement of Recent Decision in support of
 3 Defendant's Motion to Dismiss Pursuant to Rules 12(b)(6) and 9(b) and in the Alternative to
 4 Transfer Venue.

5 On March 15, 2011, the Federal Circuit issued a writ of mandamus (attached hereto as
 6 Exhibit A) in the case of In re BP Lubricants USA Inc., holding "that Rule 9(b)'s particularity
 7 requirement applies to false marking claims and that a complaint alleging false marking is
 8 insufficient when it only asserts conclusory allegations that a defendant is a 'sophisticated
 9 company' and 'knew or should have known' that the patent expired." No. 2010-M960, slip op.,
 10 at 2 (Fed. Cir. Mar. 15, 2011). The Federal Circuit accordingly ordered dismissal of the case.

11
 12 Dated: March 15, 2011

WOLF, GREENFIELD & SACKS, P.C.

13
 14 By: /s/ Gerald B. Hrycyszyn

Gerald B. Hrycyszyn
 Michael A. Albert

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 16 Attorneys for Defendant
 17 FRANKLIN SPORTS, INC.
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CERTIFICATE OF SERVICE

I am employed in the County of Suffolk, State of Massachusetts. I am over the age of 18 and not a party to this action. My business address is WOLF, GREENFIELD & SACKS, P.C., 600 Atlantic Avenue, Boston, MA 02210-2206.

Pursuant to Civil L.R. 5-5 and 5-6, I hereby certify that on March 15, 2011, I caused service of a true and correct copy of the following document:

**DEFENDANT FRANKLIN SPORTS, INC.'S STATEMENT OF RECENT
DECISION IN SUPPORT OF MOTION TO DISMISS PURSUANT TO
RULES 12(b)(6) AND 9(b) AND IN THE ALTERNATIVE TO TRANSFER
VENUE**

to be made in the manner described below.

By electronic filing with the Clerk of the Court using the CMECF System, which will send a Notice of Electronic Filing to all counsel of record who have filed a Notice of Consent to Electronic Service in this action.

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I declare that I am a member of the State Bar of California and permitted to practice before this Court at whose direction the service was made and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on March 15, 2011 at Boston, Massachusetts.

/s/ Gerald. B. Hrycyszyn

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